IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. ALLEN GILTON, SR., BONITA FAYE GILTON, CLINT COX, WONDA LOUISE COX, WARREN FULTON d/b/a FULTON MARKET, FULTON USED CARS, and TIMEPLAN CORPORATION, Defendants.	)	CIVIL ACTION NO. 75-C-126

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 31st day of ~~August~~ July, 1975, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney, and the Defendants, Allen Gilton, Sr., Bonita Faye Gilton, Clint Cox, Wonda Louise Cox, Warren Fulton d/b/a Fulton Market, Fulton Used Cars, and Timeplan Corporation, appearing not.

The Court being fully advised and having examined the file herein finds that Defendants, Allen Gilton, Sr., and Bonita Faye Gilton, were served with Summons and Complaint on April 21, 1975; that Defendant, Warren Fulton d/b/a Fulton Market Fulton Used Cars, was served with Summons and Complaint on April 11, 1975; that Defendant, Timeplan Corporation, was served with Summons and Complaint on April 15, 1975, all as appears from the United States Marshals Service herein; that Defendants, Clint Cox and Wonda Louise Cox, were served by publication, as appears from the Proof of Publication filed herein.

It appearing that the said Defendants have failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a mortgage note and foreclosure on a real property mortgage

securing said mortgage note and that the following described real property is located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

> Lot Nineteen (19), Block Thirty-nine (39), VALLEY VIEW ACRES SECOND ADDITION to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

THAT the Defendants, Allen Gilton, Sr., and Bonita Faye Gilton, did, on the 14th day of July, 1970, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of $11,100.00 with 8 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, Clint Cox and Wonda Louise Cox, were the grantees in a deed from Defendants, Allen Gilton, Sr., and Bonita Faye Gilton, dated June 24, 1974, filed June 26, 1974, in Book 1125, Page 1316, records of Tulsa County, wherein Defendants, Clint Cox and Wonda Louise Cox, assumed and agreed to pay the mortgage indebtedness being sued upon herein.

The Court further finds that Defendants, Allen Gilton, Sr., Bonita Faye Gilton, Clint Cox, and Wonda Louise Cox, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 12 months last past, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of $10,780.45 as unpaid principal with interest thereon at the rate of 8 1/2 percent per annum from June 1, 1974, until paid, plus the cost of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, Allen Gilton, Sr., and Bonita Faye Gilton, in personam, and Clint Cox and Wonda Louise Cox, in rem, for the sum of $10,780.45 with interest thereon at the rate of 8 1/2 percent per annum

from June 1, 1974, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendants, Warren Fulton d/b/a Fulton Market, Fulton Used Cars and Timeplan Corporation.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the Defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof.

/s/ Allen E. Barrow
United States District Judge

APPROVED

ROBERT P. SANTEE
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. RONALD EUGENE PETTY, JANICE CAROL PETTY, MORRISON PLUMBING COMPANY, a Corporation, COUNTY TREASURER, Tulsa County, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Defendants.	)	CIVIL ACTION NO. 75-C-194

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 31st day of July, 1975, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney; the Defendants, County Treasurer, Tulsa County, and Board of County Commissioners, Tulsa County, appearing by Gary J. Summerfield, Assistant District Attorney; and the Defendants, Ronald Eugene Petty, Janice Carol Petty, and Morrison Plumbing Company, appearing not.

The Court being fully advised and having examined the file herein finds that Defendants, Ronald Eugene Petty, County Treasurer, Tulsa County, and Board of County Commissioners, Tulsa County, were served with Summons and Complaint on May 23, 1975; that Defendant, Janice Carol Petty, was served with Summons and Complaint on May 25, 1975; and that Defendant, Morrison Plumbing Company, was served with Summons and Complaint on June 10, 1975, all as appears from the U.S. Marshals Service herein.

It appearing that Defendants, County Treasurer, Tulsa County, and Board of County Commissioners, Tulsa County, have duly filed their Answers herein on June 4, 1975, that Defendants, Ronald Eugene Petty, Janice Carol Petty, and Morrison Plumbing Company, have failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a mortgage note and foreclosure on a real property mortgage securing said mortgage note and that the following described real property is located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

> All of Lot Sixteen (16) and all that part of Lot Fifteen (15), Block One (1), SKYLINE HEIGHTS ADDITION, an Addition in Tulsa County, State of Oklahoma, according to the recorded plat thereof, and being more particularly described as follows, towit: Beginning at a point on the North boundary of said Lot 15, and point being the angle point of said boundary 30 feet East of the Northwest corner of said Lot 15, thence Northeasterly along the North boundary of said Lot 15, a distance of 101.32 feet to a point, said point being the Northeast corner of said Lot 15, thence South along the East boundary of said Lot 15, a distance of 24.17 feet to a point; thence Southwesterly a distance of 85.23 feet to the point of beginning.

THAT the Defendants, Ronald Eugene Petty and Janice Carol Petty, did, on the 28th day of April, 1967, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of $9,500.00 with 6 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, Ronald Eugene Petty and Janice Carol Petty, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than nine months last past, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of $8,458.83 as unpaid principal with interest thereon at the rate of 6 percent per annum from October 1, 1974, until paid, plus the cost of this action accrued and accruing.

The Court further finds that there is due and owing to the County of Tulsa, State of Oklahoma, from Defendants, Ronald Eugene Petty and Janice Carol Petty, the sum of $ None plus interest according to law for personal property taxes

for the year(s) _____ and that Tulsa County should have judgment, in rem, for said amount, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, Ronald Eugene Petty and Janice Carol Petty, in personam, for the sum of $8,458.83 with interest thereon at the rate of 6 percent per annum from October 1, 1974, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the County of Tulsa have and recover judgment, in rem, against Defendants, Ronald Eugene Petty and Janice Carol Petty, for the sum of $ None as of the date of this judgment plus interest thereafter according to law for personal property taxes but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendant, Morrison Plumbing Company.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue

of this judgment and decree, all of the Defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof, specifically including any lien for personal property taxes which may have been filed during the pendency of this action.

/s/ H. Dale Cook
United States District Judge

APPROVED

ROBERT P. SANTEE
Assistant United States Attorney

GARY J. SUMMERFIELD
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County

bcs

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ANNA JEAN OWENS, Plaintiff,	)	
vs.	)	No. 75-C-297
WILLCO PROPERTY MANAGEMENT, INC., Defendant.	)	

NOTICE OF DISMISSAL

Comes now the Plaintiff, Anna Jean Owens, and dismisses the above styled action.

Anna Jean Owens
Anna Jean Owens

CERTIFICATE OF SERVICE

I, Anna Jean Owens, hereby certify that a true and correct copy of the Plaintiff's Notice of Dismissal was mailed to Stephen L. Andrew, Hall & Sublett, 905 National Bank of Tulsa Building, Tulsa, Oklahoma, 74103, Attorneys for Defendant, with sufficient postage thereon fully prepaid.

Anna Jean Owens
Anna Jean Owens

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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	CIVIL ACTION NO. 75-C-157
CHARLES M. HARRIS, Defendant.	)	

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 31 day of ~~August~~ June, 1975, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney, and the Defendant, Charles M. Harris, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Charles M. Harris, was served by publication, as appears from the Proof of Publication filed herein.

It appearing that the said Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a mortgage note and foreclosure on a real property mortgage securing said mortgage note and that the following described real property is located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

> Lot Thirty-seven (37), in Block Eighteen (18), in VALLEY VIEW ACRES ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

THAT the Defendant, Charles M. Harris, did, on the 7th day of December, 1973, execute and deliver to the Administrator of Veterans Affairs, his mortgage and mortgage note in the sum of $9,500.00 with 6 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendant, Charles M. Harris, made default under the terms of the aforesaid mortgage note by reason of his failure to make monthly installments due thereon for more than ten months last past, which default has continued and that by reason thereof the above-named Defendant is now indebted to the Plaintiff in the sum of $9,403.45 as unpaid principal with interest thereon at the rate of 6 percent per annum from September 1, 1974, until paid, plus the cost of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendant, Charles M. Harris, in rem, for the sum of $9,403.45 with interest thereon at the rate of 6 percent per annum from September 1, 1974, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said Defendant to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, the Defendant be and he is forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof.

United States District Judge

APPROVED

ROBERT P. SANTEE
Assistant United States Attorney

bcs

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

TULSA BUSINESS COLLEGE, an Oklahoma corporation, Plaintiff,	)	
vs.	)	CIVIL ACTION NO. 75-C-210
UNITED STATES OF AMERICA, Defendant.	)	

ORDER

This matter having on June 24, 1974, come before the Court for hearing on plaintiff's Motion for Restraining Order and Preliminary Injunction, the parties having filed briefs and having been heard, evidence and stipulations having been received, and due consideration having been given, the Court finds:

1. That on or about November 1, 1974 plaintiff received from the District Director of Internal Revenue a "Final Notice Before Seizure" relating to an assessment made by the Internal Revenue Service for allegedly unpaid FICA taxes, and Federal Withholding and Federal Unemployment sums allegedly due and owing from plaintiff for the periods January 1, 1971 through December 31, 1972, and

2. That on November 8, 1974, plaintiff made a partial payment of these assessed taxes to, and filed a claim for refund of all the assessed taxes with, the District Director of the Internal Revenue Service, and

3. That on May 29, 1975, plaintiff filed with this Court, a Complaint asking for judgment against the United States for the full amounts previously assessed against plaintiff by the Internal Revenue Service, together with this motion for a Restraining Order and a Preliminary Injunction, and

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4. That the key issue in the underlying lawsuit will probably be the determination of the status--as "employees" or as "independent contractors"--of certain persons who worked at plaintiff's premises during the years in question, and

5. That plaintiff has shown, by stipulation for purposes of this motion and hearing, that irreparable harm would befall plaintiff should the Internal Revenue Service seize plaintiff's assets pursuant to the assessment and notice of seizure in question, and

6. That plaintiff has shown, by stipulation for purposes of this motion and hearing, that plaintiff has no other adequate remedy at law for preventing such potential irreparable harm, and

7. That this Court can find no reason for treating this case differently, as a motion for a preliminary injunction, from the cases of Enochs v. Williams Packing & Navigation Co., 370 U.S. 1 (1962), Bob Jones University v. Simon, 416 U.S. 725 (1974), and Alexander v. American's United, Inc., 416 U.S. 752 (1974), which all dealt with suits for permanent injunctions, and

8. That, having read and considered footnote 22 in the case of Bob Jones University v. Simon, supra, and having noted that the plaintiff here has filed an apparently proper coincident suit for "refund" against the United States, that, nevertheless, this motion by plaintiff is subject to the prohibitions of Section 7421(a) of Title 26, United States Code, Enochs v. Williams Packing, supra, and the clear intent of Congress as noted therein, and

9. That this Court's jurisdiction to entertain plaintiff's motion is therefore governed by Section, 7421(a), subject only to the limitations expressed in Williams Packing, supra, as reiterated in Bob Jones University, supra, and Alexander v. American's United, Inc., supra, and

10. That, based on the evidence before the Court, it cannot be said that "under no circumstances could the Government ultimately prevail" in this action. It is therefore

ORDERED, ADJUDGED and DECREED that plaintiff's Motion for Restraining Order and Preliminary Injunction is denied; and it is further

ORDERED, ADJUDGED and DECREED that costs be assessed against the plaintiff.

Dated this 31st day of July, 1975.

H. DALE COOK
United States District Judge

Approved as to form.

Kenneth P. Snoke
Assistant United States Attorney
Attorney for Defendant

James L. Edgar
Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

WILKERSON SHOE COMPANY,

Plaintiff,

vs.

UNDERWRITERS INSURANCE CO., a corporation,

Defendant,

and

UNDERWRITERS INSURANCE CO., a corporation,

Third Party Plaintiff,

vs.

NATIONAL REALTY INVESTORS TRUST OF BOSTON, d/b/a NORTHLAND SHOPPING CENTER; McMICHAEL CONCRETE COMPANY, a corporation, individually and as a successor corporation of McMICHAEL PRECAST CONCRETE COMPANY; I. A. JACOBSON, individually and as Trustee of NORTHSIDE VILLAGE SHOPPING CENTER, INC.; JACOBSON LIFETIME BUILDINGS, INC., NORTHSIDE VILLAGE SHOPPING CENTER, INC., and UNITED NATIONAL CORPORATION,

Third Party Defendants.

FILED

JUL 30 1975

Jack C. Silver, Clerk
U. S. DISTRICT COURT

CASE NO. 72-C-226

MEMORANDUM OPINION

This is an action on an insurance policy. The Plaintiff operated a shoe store in Frougs Department Store situated in a separate building in the Northland Shopping Center in Tulsa, Oklahoma. The Plaintiff obtained from the Defendant a policy of insurance protecting its store against loss or damage from windstorm or lightning.[1] At about 2:00 a.m. on September 6, 1971

1/ The pertinent policy provisions as to windstorm are:
"This policy insures against all direct loss caused by:
"3. Windstorm and hail excluding loss caused * * * indirectly by frost . . .
"This company shall not be liable for loss * * * caused by: (a) by rain, snow, * * * whether driven by wind or not, unless the building covered or containing the property covered shall first sustain an actual damage to roofs or walls by the direct action of wind or hail . . ."

approximately one-half of the roof collapsed doing considerable damage to merchandise and furniture and equipment of the Plaintiff.[2/] No one was in the building at the time and apparently no one saw the collapse. The building was approximately 200 feet by 160 feet by 20 feet high with a flat felt and tar roof with gravel covering. Plaintiff alleges herein that its loss was due to windstorm either in the form of a tornado or very high velocity winds or lightning. No evidence of loss from lightning was presented and Plaintiff's two experts testified to the effect that the building was hit by a tornado. Defendant resists Plaintiff's claim asserting that the building collapse was due to the failure of an 80 feet pre-stressed concrete beam which rested on two twenty foot concrete columns and which beam formed a part of the roof structure of the building. In this connection Defendant claims that the concrete in the area of the breaks in the center of this beam tested out only about one half of the required strength and that a heavy accumulation of rain on the roof added to the cause of the collapse on the above date. The policy does not cover loss by rain unless the building shall first sustain damage to roof or walls by the direct action of wind.

On the causation issues of windstorm or structural defect or a combination of both the case was tried to a Jury with another Judge of this Court presiding. The verdict of the Jury was for the Defendant. The presiding Judge granted a new trial and then asked the undersigned Judge to handle further proceedings in the case.

Defendant by third party practice under Rule 14, F.R.Civ. Proc. brought in the owners and constructors of the building as Third Party Defendants claiming that if it should be found liable herein to the Plaintiff that the Third Party Defendants would be liable to it for all of Plaintiff's claim against it due to their responsibility for the alleged defect in the construction of the building. By agreement of all parties, the Court under Rule 42(b)

2/ Plaintiff's evidence established a loss of $65,331.88.

F.R.Civ. Proc. separated for trial purposes the issues presented by the Complaint and the Third Party Complaint. The parties agreed to try the case to the Court sitting without a jury.

After hearing the evidence the Court finds and concludes that the building collapsed due to a defective 80 foot prestressed concrete beam and a heavy accumulation of rain on the roof and the roof collapse was not due to windstorm, either in the form of a tornado or high velocity winds or lightning. Thus, Plaintiff's loss was not covered by Defendant's policy of insurance.

Plaintiff's evidence was that a car wash some four miles away suffered the loss of its roof which was layed over a few feet by a tornado; that the roof of a building in an apartment complex some four to five miles away was partially blown off and two other buildings in the complex received damage to brick wing type walls and that some wall and window damage was sustained in the Tulsa Civic Center Complex in downtown Tulsa some three and one half miles from Plaintiff's building. Plaintiff presented evidence that a car port in a residence near the building fell down. Plaintiff's engineers testified that the building collapsed due to tornado action as some of the walls of the building were blown outwardly which is the type of damage from a tornado due to its low pressure.

Defendant's evidence was to the effect that local weather reports did not disclose the presence of a tornado at the time involved but did report a thunderstorm; that they showed 4.05 inches of rain on September 6, 1971 with 2.22 inches thereof falling between 1:00 and 2:00 a.m. of that day. The weather reports also showed the highest wind on September 6, 1971 to be 46 miles per hour from the northeast but the time is not reported. The wind was 20 miles per hour at 3:00 a.m. Plaintiff's experts testified that a tornado passed over the building from the southeast to the northwest.

Defendant's expert testified that laboratory core tests of the concrete in the area of the failure in the center of the eighty foot beam reveal compressive strength of around 1800 pounds per square inch, whereas, they should have tested to at least 4000 pounds per square inch; that five beams fell but only one eighty foot beam showed concrete failure; that none of the columns showed any defects; that the walls of the building were of light construction being made of concrete blocks erected between the columns and only tied to the structure by morter between the blocks and columns with stone veneer added to the outside and that the wall panels except for some openings were approximately twenty feet high and forty feet wide; that about one half of the roof of the building collapsed and fell to the floor; that such action would compress the air in the closed building and blow the walls outward; that the tearing of the roof by the collapse would come late in the falling action and not significantly lessen the effect of compressed air from the falling of the roof on the walls of the building; that there was evidence of considerable roof gravel inside the building which had been washed to the south end of the building after the collapse which is evidence of presence of considerable water on the flat roof at the time of the collapse which washed the gravel in that direction with the collapse of the roof. This witness, who qualified as an expert in tornadoes, testified that had the building been hit by a tornado, as claimed by Plaintff, the same would have sucked the felt paper roof and insulation and perhaps more roof structure into the tornado funnel and carried it some distance away, whereas, after the collapse none of the roof was missing--it had only partially collapsed into the building. This witness also testified that if the building has been hit by high velocity winds from the southeast to the northwest instead of a tornado the south and east walls of the building would not have collapsed in an outward direction but would have collapsed inward.

This witness found no damage to the other building in the shopping center and the evidence reveals no other structure damage of any consequence in the surrounding neighborhood except the one car port roof which partially collapsed. There was also no evidence that any of the debris of the building was carried any distance from the building.

From all the evidence presented, the Court is of the opinion and judgment and so finds and concludes that the collapse of the building involved and Plaintiffs loss was due to a defective eighty foot pre-stressed concrete beam in the building which with the presence of heavy rainfall on the flat roof failed and by chain reaction brought about the collapse of about one half of the roof and the resulting outward wall damage. The Court does not believe from the evidence that the building was hit by a tornado nor does the Court believe that the roof and wall collapse was caused by a wind of high velocity.

When windstorm and structural defect (or any other non-covered factor) join or concur to bring about damage to a building, the rule of law usually applied is that the efficient and dominate cause between the two is liable for the resulting loss. 93 A.L.R.2 145, Annotation: Cause of loss under windstorm insurance coverage. 44 Am.Jur 2d, Insurance § 1793; Lynch v. Travelers Indemnity Company, 452 F.2d 1065 (Eighth Cir. 1972); Kemp v. American Universal Insurance Company, 391 F.2d 533 (Fifth Cir. 1968); National Hills Shop. Cent., Inc. v. Insurance Co. of No. Am., 308 F. Supp. 248 (S.D.Ga. 1970); Beattie Bonded Wrhse. Co. v. General Acc.F.&L.A. Corp., Ltd., 315 Fed. Supp. 996 (D. S.C. 1970); American National Bank v. Aetna Ins. Co., 447 F.2d 680, (7th Cir. 1971).

The Court need not apply this rule of law herein for the Court is of the opinion that the building collapse and Plaintiff's

loss was caused solely by the structural defect herein mentioned and rain, both being non-covered causes under Plaintiff's policy. The Court does not feel that the building was damaged by either a tornado or a windstorm. But in any event as there is some evidence of rather high winds in Tulsa and in the area of the building on September 6, 1971 during or about the time involved and as circumstantial evidence must be relied upon herein to some extent the Court concludes that between the structural defect and wind the efficient and dominant cause of the building collapse and the Plaintiff's loss was a structural defect and not a windstorm.

By reason of the foregoing, judgment should be entered herein in favor of the Defendant by which Plaintiff's action against it is dismissed and Defendant's Third Party Complaint against the Third Party Defendants should also be dismissed as being moot in view of Defendant not being found liable herein to Plaintiff.

Dated this 30 day of July, 1975.

Fred Daugherty
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

WILKERSON SHOE COMPANY,

Plaintiff,

vs.

UNDERWRITERS INSURANCE CO., a corporation,

Defendant,

and

UNDERWRITERS INSURANCE CO., a corporation,

Third Party Plaintiff,

vs.

NATIONAL REALTY INVESTORS TRUST OF BOSTON, d/b/a NORTHLAND SHOPPING CENTER; McMICHAEL CONCRETE COMPANY, a corporation, individually and as a successor corporation of McMICHAEL PRECAST CONCRETE COMPANY; I. A. JACOBSON, individually and as Trustee of NORTHSIDE VILLAGE SHOPPING CENTER, Inc.; JACOBSON LIFETIME BUILDINGS, INC.; NORTHSIDE VILLAGE SHOPPING CENTER, INC.; and UNITED NATIONAL CORPORATION,

Third Party Defendants.

FILED
JUL 30 1975
Jack C. Silver, Clerk
U. S. DISTRICT COURT

CASE NO. 72-C-226

73-C-206

JUDGMENT

On the basis of the Memorandum Opinion of the Court filed herein of even date,

It is Ordered that the action in Plaintiff's Complaint is dismissed and the action contained in the Third Party Complaint herein is dismissed.

Dated this 30 day of July, 1975.

Reed Daugherty
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. WILLIE DELOIS HOLBERT a/k/a WILLIE HOLBERT a/k/a WILLIE J. HOLBERT, a Single Person, DORMAN STITES d/b/a DORMAN HOME SUPPLIES, and FRANK FRENCH, a Sole Proprietorship, d/b/a HERITAGE PERSONNEL, Defendants.	)	CIVIL ACTION NO. 75-C-193

FILED
JUL 29 1975
Jack C. Silver, Clerk
U. S. DISTRICT COURT

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 28th day of July, 1975, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney, and the Defendants, Willie Delis Holbert a/k/a Willie Holbert a/k/a Willie J. Holbert, Dorman Stites d/b/a Dorman Home Supplies, and Frank French d/b/a Heritage Personnel, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Willie Delois Holbert, was served with Summons and Complaint on June 20, 1975; that Defendant, Dorman Stites d/b/a Dorman Home Supplies, was served with Summons and Complaint on May 23, 1975; and that Defendant, Frank French d/b/a Heritage Personnel, was served with Summons and Complaint on May 21, 1975, all as appears from the U.S. Marshals Service herein.

It appearing that the said Defendants have failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a mortgage note and foreclosure on a real property mortgage securing said mortgage note and that the following described real property is located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Thirty-five (35), Block Ten (10), SUBURBAN ACRES THIRD ADDITION to Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

THAT the Defendant, Willie Delois Holbert, did, on the 29th day of June, 1973, execute and deliver to the Administrator of Veterans Affairs, his mortgage and mortgage note in the sum of $9,500.00 with 4 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendant, Willie Delois Holbert, made default under the terms of the aforesaid mortgage note by reason of his failure to make monthly installments due thereon for more than eight months last past, which default has continued and that by reason thereof the above-named Defendant is now indebted to the Plaintiff in the sum of $9,326.50 as unpaid principal with interest thereon at the rate of 4 1/2 percent per annum from November 1, 1974, until paid, plus the cost of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendant, Willie Delois Holbert, in personam, for the sum of $9,326.50 with interest thereon at the rate of 4 1/2 percent per annum from November 1, 1974, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendants, Dorman Stites d/b/a Dorman Home Supplies and Frank French d/b/a Heritage Personnel.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said Defendant to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to

the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the Defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof.

United States District Judge

APPROVED

ROBERT P. SANTEE
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

DEBORAH TROXELL SHIBLEY, Plaintiff, v. JOHN DOE, an alias, and MICHAEL P. SHIBLEY, Defendants, and STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, a foreign insurance company, Garnishee.	)	No. 72-C-451

O R D E R

This matter comes on before the Court upon various motions of the Garnishee, all motions seeking a review of the Court's Order of July 11, 1975, remanding this case.

Garnishee's motions and brief are directed to one relevant issue, being the Court's action pursuant to 28 U.S.C. Section 1447(c):

> "If at any time before final judgment it appears that the case was removed improvidently and without jurisdiction, the district court shall remand the case . . ."

The requirement of this section dictates the rule that jurisdiction cannot be waived and is subject to more than the initial scrutiny focused on a removal petition. The relevant issue at hand is whether the Court did attain jurisdiction upon the filing of the removal petition. Unless removal was proper, no jurisdiction attached to the case. What is disputed here is whether, upon removal, there was the requisite "matter in controversy exceeding the sum or value of $10,000, exclusive of interests and costs," 28 U.S.C. Section 1332.

In McNutt v. General Motors &c. Corp, 298 U.S. 178 (1936), the Supreme Court had cause to examine a predecessor of 28 U.S.C. Section 1447, being 28 U.S.C. Section 80. In the revision note to 28 U.S.C. Section 1447, it is said, "Subsection (c) is derived from Sections 71 and 80 of former Title 28." In McNutt, the Court stated:

"The Act of 1875 (28 U.S.C. Section 80), in placing upon the trial court the duty of enforcing the statutory limitations as to jurisdiction by dismissing or remanding the case at any time when the lack of jurisdiction appears, applies to both actions at law and suits in equity. The trial court is not bound by the pleadings of the parties, but may, of its own motion, if led to believe that its jurisdiction is not properly invoked, 'inquire into the facts as they really exist.'" (Citing cases.)

Because removal jurisdiction is somewhat more limited jurisdiction, as evidenced by the Congressional purpose and the intent that the removal statutes be strictly construed, there is some effect in a removal case upon the general rules of pleading enunciated in more typical plaintiff v. defendant cases, such as those cases cited by garnishee in its brief.

The general rule is that the allegations of the complaint do establish jurisdiction, rather than the amount plaintiff could recover. Garnishee's authorities, such as Operator's Piano Co. v. First Wisconsin Trust Co., 283 Fed. 904 (CA7 1926), do establish a limitation. The demand controls unless it appears that the amount demanded is merely colorable and beyond reasonable expectations of recovery. What is the reasonable expectation of recovery when a debt stemming from an insurance contract of $10,000 is sued upon? Had plaintiff initiated suit against State Farm in the first instance, upon the policy only, a demand for an amount in excess of the policy limits would have been at best colorable and beyond reasonable expectations.

The 10th Circuit Court of Appeals has indicated the duties of the trial court in examining jurisdiction. Judge Breitenstein stated, "Ordinarily, the amount in controversy is to be determined by the allegations of the complaint, or, where they are not dispositive, the allegations in the petition for removal," citing cases. Nonquist v. J.C. Penney, 421 F.2d 597 (CA10 1970). The responsibilities of both counsel and court can be drawn from Craig v. Champlin Petroleum Co., 300 F.Supp. 119 (1969), aff'd. 421 F.2d 236 (CA10 1969), wherein this court indicated that, absent a plaintiff's challenge to removal, the Court may rely on a garnishee's pleading. Beyond that, however, when plaintiff does assert a challenge to jurisdiction, the court is under a continuing duty to examine jurisdiction and to dismiss or remand when it becomes clear that there could never have been an amount in controversy exceeding the sum or value of $10,000.

It has long been clear that what is garnished by way of a debt is the garnishee's obligation to pay. Harris v. Balk, 198 U.S. 215 (1905). Here, the obligation to pay up to a certain, fixed sum arises from the contract of insurance. The value of the contract, when the contract alone is sued upon, establishes the maximum liability of the garnishee. The fact that the judgment debtor may still owe above and beyond the garnishee's debt does not aid the garnishee attempting to remove in satisfying the "amount in controversy" requirements.

Thus, a review of the authorities indicates that the Court is not bound to accept plaintiff's garnishment affidavit, nor is the Court bound to accept the statements of garnishee's removal petition. Here the plaintiff recovered in the state court a judgment of $41,500. Plaintiff's garnishment affidavit did not allege State Farm as garnishee to owe this amount to the judgment debtor. Garnishee's mere assertion of a $41,500 judgment in the state court and its indebtedness to the judgment debtor does not foreclose the Court's subsequent examinations of the amount in controversy. Plaintiff never asserted the debt of the garnishee to be other than the policy limit and the garnishee has never declared that its policy debt could be in excess of the $10,000 policy limit. A $10,000 policy limit is not an amount in excess of $10,000. For these reasons, garnishee's reliance on Adriaenssens v. Allstate Insurance Co., 258 F.2d 888 (CA10 1958); and London and Lancashire Indemnity Co. of America v. Courtney, 106 F.2d 277 (CA10 1939), is misplaced. Those cases declare that a garnishment is removable when the jurisdictional requisites are met. In this case, the requisite amount was never met. Having no removal jurisdiction, garnishee's additional contentions fall prey to this initial jurisdictional defect. The existence of counterclaims and third party claims does not operate cumulatively to afford jurisdiction where removal was improper and jurisdiction never existed.

As Judge Daugherty stated in Hobbs v. Manley, 248 F.Supp. 38 (W.D. Okla. 1965), "[t]he required jurisdictional amount would be involved between these parties if the plaintiff had made claim against the garnishee for the full amount of his state court judgment against the defendant . . . But as to the garnishee, the plaintiff . . . " never, here, claimed more liability or debt than the contractual limits of the policy.

IT IS, THEREFORE, THE ORDER OF THE COURT that Garnishee's Motion for New Trial, Motion for Rehearing, Motion to Reconsider, Motion to Vacate Order, and Motion to Alter the Judgment are hereby denied.

Dated this 28th day of July, 1975.

Luther Bohanon

LUTHER BOHANON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

WILLIAM LYNN STRINGFIELD, Petitioner, vs.	)	
JOHN GRIDER, Warden, Oklahoma State Reformatory, and RICHARD R. WINTERS, Parole Officer, Oklahoma Department of Corrections, Respondents.	)	NO. 72-C-236

FINAL JUDGMENT ON REMAND

The above styled cause comes on for disposition pursuant to affirmance on appeal by the United States Court of Appeals for the Tenth Circuit, sub nom. Terry Lee Radcliff v. Anderson, Warden, and Grider, Warden, et al., v. William Lynn Stringfield, Nos. 73-1520 and 73-1550 (consolidated), June 14, 1974, rehearing denied en banc January 24, 1975, mandate issued January 27, 1975, reported 509 F.2d 1093 (10th Cir. 1975); and the State's petition for a writ of certiorari denied by the United States Supreme Court on April 21, 1975, sub nom. Anderson, et al. v. Radcliff and Stringfield, October Term, 1974, No. 74-1061, ___ U.S. ___, 95 S.Ct. ___, 43 L.Ed.2d ___. Further, the Court finds that Mr. Richard R. Winters has succeeded Mr. Sam Isaacs as Petitioner's parole officer, and the said Richard R. Winters should be added as a party respondent pursuant to Rule 25(d), F.R.C.P.

Herein, the Tenth Circuit Court of Appeals dealt with the issue of the retroactivity of their holding in Lamb v. Brown, 456 F.2d 18 (10th Cir. 1972).

Lamb was a habeas corpus proceeding by a State of Oklahoma prisoner wherein the Tenth Circuit Court of Appeals reviewed the conviction under a Statute of the State of Oklahoma to determine if petitioner's rights guaranteed by the Constitution of the United States had been violated. The statute in question was 10 Okl.St.Ann. § 1101(a), effective January 13, 1969, providing in pertinent part: "The term 'child' means any male person under the age of sixteen (16) years and any female person under the age of eighteen (18) years." The appellate Court held 10 Okl.St.Ann. § 1101(a) violative of the equal protection clause of the Fourteenth Amendment.

In affirming this United States District Court herein, the Tenth Circuit Court of Appeals stated that it held in Lamb that 10 Okl.St.Ann. § 1101 (Supp. 1969) was unconstitutional in that it violated the equal protection clause of the Fourteenth Amendment, and further stated that the purpose of the Lamb decision was to end sex discrimination in juvenile proceedings. The appellate Court affirmed this Court and held that the principles of "basic fairness" mentioned in Robinson v. Neil, 409 U.S. 505, 93 S.Ct. 876, 35 L.Ed.2d. 29, and "essential justice" mentioned in Gosa v. Mayden, 413 U.S. 665, 93 S.Ct. 2926, 37 L.Ed.2d 873, require that the Lamb decision be applied retroactively. In the supplemental, per curiam opinion on rehearing en banc, reported 509 F.2d 1096, the Tenth Circuit stated in part, "The decision herein holds only that the 1972 decision in Lamb v. Brown, 10 Cir., 456 F.2d 18, declaring void on constitutional grounds a 1969 Oklahoma statute, 10 Okl.St.Ann. § 1101 (Supp. 1969), shall be applied retroactively in the cases before us. . . . The issue in the cases before us is whether the petitioners should be denied the treatment given the petitioner in Lamb because of the statement in that case that it should not be applied retroactively. Integrity of the fact finding process is not determinative. Basic fairness and essential justice demand that these petitioners be treated no differently than the petitioner in Lamb."

In compliance with the judgment, opinion and mandate of the Tenth Circuit Court of Appeals affirming this Court herein, the Court adopts the Journal Entry of Judgment on remand entered the 20th day of April, 1972, in Lamb, and it is the Order, Judgment and Decree of this Court that:

1. The purported adult felony conviction imposed upon Petitioner, William Lynn Stringfield, on August 30, 1971, by the District Court of Tulsa County, State of Oklahoma, in Case No. CRF-71-27, petition for certiorari denied November 1, 1971, by the Court of Criminal Appeals for the State of Oklahoma, No. A-17042 (unreported), statutory application for post-conviction relief denied July 7, 1972, by the District Court of Tulsa County, State of Oklahoma (unreported), be and hereby is vacated, quashed, set aside, and held for naught, with prejudice, as null and void for the

repugnance of same to the Equal Protection of the Laws Clause of the Fourteenth Amendment to the Constitution of the United States; and that a Writ of Habeas Corpus do issue, releasing Petitioner from all actual and/or constructive restraint, injury, and detriment flowing therefrom forthwith.

2. Petitioner be and hereby is restored to his full rights as a citizen of the United States and of the State of Oklahoma; and that all civil and other legal disabilities and disqualifications heretofore incumbent upon Petitioner because of the said purported conviction herein, to include specifically that of Federal and State disfranchisement, be and hereby are lifted and set aside.

3. That all public, official, and/or quasi-official records relating to Petitioner's purported conviction herein be expunged and destroyed.

4. Further, pursuant to Rule 25(d), F.R.C.P., Richard R. Winters be and he is hereby added herein as a party respondent.

IT IS SO ORDERED AND ADJUDGED this 28th day of July, 1975, at Tulsa, Oklahoma.

Chief F. Barrow

CHIEF JUDGE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

J. B. MAHONEY,

Plaintiff,

vs.

SMITHKLINE CORPORATION, a foreign corporation,

Defendant.

NO. 74-C-289

ORDER OF DISMISSAL

ON this 22 day of July, 1975, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the plaintiff filed herein against the defendant be and the same hereby is dismissed with prejudice to any future action.

Allen E. Barrow

JUDGE, District Court of the United States, Northern District of Oklahoma

APPROVAL:

THOMAS A. WALLACE
MAURICE LAMPTON

By: Thomas A. Wallace

Attorneys for Plaintiff,

ALFRED B. KNIGHT,

Alfred B. Knight

Attorney for the Defendant.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OKLAHOMA

BILL E. CHILDRESS and XIOMARA CHILDRESS, Plaintiffs,	)	
vs.	)	No. 75-C-259
OLD STONE BANK, a Rhode Island corporation, Defendant.	)	

ORDER GRANTING DISMISSAL

On this 23rd day of July, 1975, there having been presented to the undersigned United States District Judge the application filed herein by the plaintiffs seeking a dismissal of the captioned case, and the court having considered the same and being well and sufficiently advised in the premises, finds the application is made by agreement of both parties and the dismissal should be granted.

IT IS THEREFORE ORDERED BY THIS COURT that the above entitled and numbered cause ~~is~~ are hereby dismissed with prejudice.

Allen E. Barrow

United States District Judge

Blackstock Joyce Pollard
Blackstock & Montgomery
300 Petroleum Club Bldg.
Tulsa, OK 74119
Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

DAVID SNOW		
	Plaintiff	
vs		NO. 73-C-43
YELLOW FREIGHT SYSTEM, INC., an Indiana Corporation,		
	Defendant	

ORDER

Plaintiff brings this action under the Civil Rights Act of 1964 [42 U. S. C. A. 200 et seq.] alleging that the defendant has been guilty of religious discrimination against him by refusing to accommodate plaintiff in the practice of his religion, specifically by requiring plaintiff to work after sundown on Friday evening. Plaintiff is a member of a religious organization known as "The Assemby of Yahvah", which forbids its members to work from sundown on Friday evening to sundown on Saturday evening.

The defendant Yellow Freight System, Inc., denies that it discriminated against the plaintiff because of his religious beliefs, and further states that to accommodate the plaintiff's religious belief concerning working after sundown on Friday would create an undue hardship upon the defendant in the conduct of its business, and its alleged failure to accommodate plaintiff in this regard was justified on the grounds of business necessity. The defendant further denied that "The Assembly of Yahvah" was in fact a religious organization within the meaning of the Civil Rights Act of 1964.

The above issues were joined between the parties after plaintiff had exhausted his administrative remedies provided by statute. Originally plaintiff had included in his action the International Brotherhood of Teamsters and the International Brotherhood of Teamsters, Local #523, but in response to their

motions to dismiss, had dismissed them from the action.

The instant case has been the subject of many motions, briefs, and pre-trial conferences. Pursuant to an agreement between the counsel and the court at the last pre-trial conference, the parties entered into a stipulation in an effort to seek a bonafide settlement of the issues between the parties in a manner which would not only accommodate the religious beliefs of the plaintiff but which would not unduly burden the business of the defendant nor interfere with its contractual obligations under its collective bargaining agreement with the International Brotherhood of Teamsters. The court has carefully considered the statements of counsel made at pre-trial conference, the pleadings making up the issues in the case, and the stipulations entered into between the parties, and finds that the following order should be entered which is dispositive of the rights and obligations of the parties and of this action:

1. The defendant shall reinstate the plaintiff David Snow to his former position of full time employment, without loss of seniority rights. Plaintiff David Snow's name shall be reinstated on the Seniority List maintained by the defendant at the position or place where the same would have appeared had the plaintiff not been discharged by the defendant on May 30, 1972. The plaintiff's reinstatement to his former position of employment and seniority by the defendant shall be without back pay, any time lost by reason of his discharge, and without reimbursement or any other monetary benefits and/or compensation, including any contributions to any health, welfare or pension funds on his behalf, which he would have received from the defendant had he not been discharged.

2. The religious organization known as "The Assembly of Yahvah", is, for the purpose of this action, recognized by the court as a valid religious organization. The defendant therefore shall not require the plaintiff to work any bid shift assigned to him if, in so doing, he would be required to work past sundown on Friday. In the event that plaintiff is assigned to work any bid-shift which requires work to be done after sundown on Friday,

he will not work any portion of Friday or Saturday, and the defendant may call in a casual employee to work in his stead on those days. In the event that plaintiff does not work on either Friday or Saturday because of his religious beliefs, the defendant will not be required to pay him compensation of any kind whatsoever in the form of wages or salary, nor shall the defendant be required to make any contributions to any health, welfare or pension fund of the International Brotherhood of Teamsters or the International Brotherhood of Teamsters, Local #523, on account of or on behalf of the plaintiff on those days which he does not work because of his religious belief.

3. This order shall not be construed or interpreted in any manner which would directly or indirectly create in the plaintiff any employment right or rights (regardless of whether the same shall arise by virtue of collective bargaining agreements between the defendant and any labor organization, or otherwise) greater than those which may be exercised or claimed by any other employee of the defendant; nor shall this order be interpreted to confer upon any other employee of the defendant any rights not provided for under the provisions of the collective bargaining agreement between the defendant and the International Brotherhood of Teamsters and the International Brotherhood of Teamsters, Local #523.

This order fully determines the rights and obligations of the parties herein and there are no issues left to be determined between the parties in the instant cause.

It is so ordered this 21st day of July, 1975.

/S/ H. Dale Cook
H. Dale Cook, Judge

APPROVED AS TO FORM:

David Snow
David Snow, Plaintiff

/S/ Robert M. Butler
Robert M. Butler, Attorney for Plaintiff

John M. Keefer, Attorney for
Plaintiff

YELLOW FREIGHT SYSTEMS, INC., an
Indiana Corporation

By;

Joseph A. Sharp, Attorney for
Defendant

Joseph F. Glass, Attorney for
Defendant

ws

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. ALBERT L. BYROM and WILLIE R. BYROM, Defendants.	)	CIVIL ACTION NO. 75-C-246

NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff herein, by and through its attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and hereby gives notice of its dismissal of this action pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.

Dated this 21st day of July, 1975.

UNITED STATES OF AMERICA

NATHAN G. GRAHAM
United States Attorney

ROBERT P. SANTEE
Assistant United States Attorney

bcs

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing pleading was served on each of the parties hereto by mailing the same to them or to their attorneys of record on the 21st day of July, 1975.

Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

STAINLESS & SPECIALTY ALLOYS CO., Plaintiff, vs. MURRELL TOOL SERVICE, INC., Defendant and Third-Party Plaintiff, vs. AERO PARTS COMPANY, Third-Party Defendant.	No. 74-C-364

ORDER

NOW on this 7th day of July, 1975, there came on the Application of the Plaintiff through its attorneys for the Court to assess a reasonable attorney's fee and have the same taxed as costs in favor of the Plaintiff.

The Plaintiff was represented by its attorneys, Paul R. Hodgson and James R. Hays, and the Defendant was represented by Thomas A. Wallace. The Court received an agreed stipulation that if an expert attorney were qualified to testify as to a reasonable fee, his opinion would be that the Plaintiff was entitled to a $2,500.00 attorney's fee. The Court after receiving said stipulation found an attorney's fee on behalf of the Plaintiff in the sum of $2,500.00 to be taxed as costs and as judgment against the Defendant.

Exception allowed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff's attorneys, Paul R. Hodgson and James R. Hays receive an attorney's fee of $2,500.00 to be paid by the Defendant and that said sum shall be taxed as costs and become a judgment against the Defendant.

Geo. Sable Cook

U. S. DISTRICT JUDGE

APPROVED AS TO FORM:

/s/ James R. Hays

Attorney for Plaintiff

APPROVED AS TO FORM:

/s/ Thomas A. Wallace
Attorney for Defendant

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing Order was mailed this 16 day of July, 1975 to Mr. Thomas A. Wallace, 315 Berryhill Building, Sapulpa, Oklahoma 74066, as attorney for defendant.

/s/ James R. Hays

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

OTIS ELMER BRIMER,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

FILED
JUL 17 1975
Jack C. Silver, Clerk
U. S. DISTRICT COURT

No. 75-C-254

O R D E R

This matter comes on for hearing before the Court upon the plaintiff's motion to dismiss.

The Court finds that the plaintiff has heretofore testified in open Court on or about the 8th day of July, 1975, before the Honorable Dale Cook, United States District Judge, that all matters contained within plaintiffs's complaint are now moot and it is the wish of the plaintiff to dismiss his cause of action.

The Court further finds that plaintiff has now filed a motion with the Court for the dismissal of the afore styled and numbered cause of action and upon testimony heretofore taken and upon plaintiff's motion to dismiss, the Court finds that said cause of action should be dismissed with prejudice.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the above-styled and numbered case matter shall be dismissed with prejudice pursuant to the testimony taken in open Court and further, pursuant to plaintiff's motion to dismiss.

Dale Cook

JUDGE OF THE DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. RON DALE HUMPHRIES, PATRICIA G. HUMPHRIES, COUNTY TREASURER, TULSA COUNTY, BOARD OF COUNTY COMMISSIONERS, TULSA COUNTY, Defendants.	)	CIVIL ACTION NO. 74-C-444

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 15 day of July, 1975, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney, the Defendants, County Treasurer, Tulsa County, and Board of County Commissioners, Tulsa County, appearing by Gary J. Summerfield, Assistant District Attorney, Tulsa County; and the Defendants, Ron Dale Humphries and Patricia G. Humphries, appearing not.

The Court being fully advised and having examined the file herein finds that Defendants, County Treasurer, Tulsa County, and the Board of County Commissioners, Tulsa County, were served on November 14, 1974, both as appears from the Marshals Return of Service herein and that service by publication was made on Ron Dale Humphries and Patricia G. Humphries as appears from the Proof of Publication filed herein.

It appearing that the Defendants, County Treasurer, Tulsa County, and Board of County Commissioners, Tulsa County, have duly filed their answers herein on November 25, 1974; that Defendants, Ron Dale Humphries and Patricia G. Humphries, have failed to answer herein; and that default has been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a mortgage note and foreclosure on a real property mortgage securing said mortgage note and that the following described real property is located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

> Lot Twenty-Four (24), Block Seven (7), NORTHGATE THIRD ADDITION to the City of Tulsa, Tulsa County, Oklahoma according to the recorded plat thereof.

THAT the Defendants, Ron Dale Humphries and Patricia G. Humphries, did, on the 14th day of June, 1972, execute and deliver to the Diversified Mortgage and Investment Company, their mortgage and mortgage note in the sum of $17,550.00 with 7percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

THAT by Assignment of Mortgage of Real Estate dated June 29, 1972, Diversified Mortgage and Investment Company, assigned said Note and Mortgage to Government National Mortgage Association; and by Assignment dated October 24, 1972 Government National Mortgage Association assigned said Note and Mortgage to Mortgage Associates, Inc., and by Assignment dated November 6, 1972, Mortgage Associates, Inc., assigned said Note and Mortgage to Urban Shelter Mortgages, Inc.; and by Assignement dated November 6, 1972, Urban Shelter Mortgages, Inc., assigned said Note and Mortgage to Federal National Mortgage Association, a corporation; and by Assignment dated October 29, 1973, Federal National Mortgage Association, a corporation, assigned said Note and Mortgage to the Secretary of Housing and Urban Development of Washington, D.C.

The Court further finds that Defendants, Ron Dale Humphries and Patricia G. Humphries, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 12 months last past, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of $17,370.25 as unpaid principal with interest thereon at the rate of 7 percent per annum from December 1, 1973,

until paid, plus the cost of this action accrued and accruing.

The Court further finds that there is due and owing to the County of Tulsa, State of Oklahoma, from Defendants, Ron Dale Humphries and Patricia G. Humphries, the sum of $ None plus interest according to law for personal property taxes for the year(s) _____ and that Tulsa County should have judgment, in rem, for said amount, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

The Court further finds that there is due and owing to the County of Tulsa, State of Oklahoma, from Defendants, Ron Dale Humphries and Patricia G. Humphries, the sum of $ 533.00 plus interest according to law for real estate taxes for the year(s) 1973 and 1974 and that Tulsa County should have judgment, in rem, for said amount, and that such judgment is superior to to the first mortgage lien of the Plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, Ron Dale Humphries and Patricia G. Humphries, in rem, for the sum of $17,370.25 with interest thereon at the rate of 7 percent per annum from December 1, 1973, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the County of Tulsa have and recover judgment, in rem, against Defendants, Ron Dale Humphries and Patricia G. Humphries, for the sum of $ None as of the date of this judgment plus interest thereafter according to law for personal property taxes, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the County of Tulsa have and recover judgment, in rem, against Defendants, Ron Dale Humphries and Patricia G. Humphries, for the sum of $ 533.00 as of the date of this judgment plus interest thereafter according to law for real estate taxes, and that such judgment is superior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment which sale shall be subject to the real estate tax judgment of Tulsa County, supra. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the Defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof.

United States District Judge

APPROVED

ROBERT P. SANTEE
Assistant United States Attorney

CARL C. SUMMERFIELD
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. REUBEN I. PRIVETTE, ELSIE PRIVETTE, GLEN B. RISLEY, and COMMISSIONER OF FINANCE AND REVENUE for the City of Tulsa, Defendants.	)	CIVIL ACTION NO. 75-C-2

FILED
JUL 16 1975
Jack C. Silver, Clerk
U. S. DISTRICT COURT

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 15th day of ~~May~~ July, 1975, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney; the Defendant, Commissioner of Finance and Revenue for the City of Tulsa, appearing by David Nelson, Assistant City Attorney; and the Defendants, Reuben I. Privette, Elsie Privette, and Glen B. Risley, appearing not.

The Court being fully advised and having examined the file herein finds that Defendants, Reuben I. Privette and Elsie Privette, were served by publication, as appears from the Proof of Publication filed herein; that Defendant, Glen B. Risley, was served with Summons and Complaint on February 4, 1975; and that Defendant, Commissioner of Finance and Revenue for the City of Tulsa, was served with Summons and Complaint on January 3, 1975, all as appears from the U.S. Marshals Service herein.

It appearing that Defendant, Commissioner of Finance and Revenue for the City of Tulsa, has duly filed its Answer herein on January 21, 1975, that Defendants, Reuben I. Privette, Elsie Privette, and Glen B. Risley, have failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a mortgage note and foreclosure on a real property mortgage securing said mortgage note and that the following described

real property is located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

> Lot Six (6), Block Two (2), SUBURBAN ACRES, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded amended plat thereof.

THAT the Defendants, Reuben I. Privette and Elsie Privette, did, on the 7th day of May, 1964, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of $9,100.00 with 5 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendant, Glen B. Risley, was the grantee in an unrecorded deed from Defendants, Reuben I. Privette and Elsie Privette, dated May 2, 1969, wherein Defendant, Glen B. Risley, assumed and agreed to pay the mortgage indebtedness being sued upon herein.

The Court further finds that Defendants, Reuben I. Privette and Elsie Privette, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 12 months last past, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of $7,780.92 as unpaid principal with interest thereon at the rate of 5 1/2 percent per annum from March 1, 1974, until paid, plus the cost of this action accrued and accruing.

The Court further finds that Defendant, City of Tulsa, State of Oklahoma, is entitled to judgment against Defendants, Reuben I. Privette and Elsie Privette, in the amount of $96.14, plus interest according to law and accrued court costs, but that such judgment would be subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, Reuben I. Privette and Elsie Privette, in rem, for the sum of $7,780.92 with interest thereon at the rate of 5 1/2 percent

per annum from March 1, 1974, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant, City of Tulsa, State of Oklahoma, have and recover judgment, in rem, against the Defendants, Reuben I. Privette and Elsie Privette, in the amount of $96.14, plus interest according to law and accrued court costs as of the date of this judgment, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendant, Glen B. Risley.

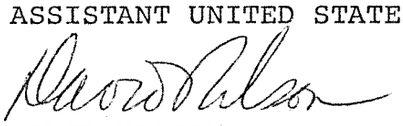
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the Defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof.

/s/ Allen E. Barrow
United States District Judge

APPROVED

ROBERT P. SANTEE
ASSISTANT UNITED STATES ATTORNEY



DAVID NELSON
Assistant City Attorney
Attorney for Defendant,
Commissioner of Finance
and Revenue for the City
of Tulsa

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. EDWARD SAMILTON, DELTESSA SAMILTON, SEARS, ROEBUCK AND COMPANY, a Corporation, MASTER CHARGE, a Corporation, MORRIS FINANCE, a Corporation, OKLAHOMA SCHOOL OF BUSINESS, a Corporation, BENEFICIAL FINANCE, a Corporation, COUNTY TREASURER, Tulsa County, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Defendants.	)	CIVIL ACTION NO. 75-C-97

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 15th day of ~~June~~ July, 1975, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney; the Defendant, Master Charge, appearing by its attorney, Harry A. Lentz, Jr.; the Defendants, County Treasurer, Tulsa County, and Board of County Commissioners, Tulsa County, appearing by Gary J. Summerfield, Assistant District Attorney; and the Defendants, Edward Samilton, Deltessa Samilton, Sears, Roebuc k and Company, Morris Finance, Oklahoma School of Business, and Beneficial Finance, appearing not.

The Court being fully advised and having examined the file herein finds that Defendants, Edward Samilton and Deltessa Samilton, were served with Summons and Complaint on April 1, 1975, and that Defendants, Sears, Roebuck and Company, Master Charge, Morris Finance, Oklahoma School of Business, Beneficial Finance, County Treasurer, Tulsa County, and Board of County Commissioners, Tulsa County, were served with Summons and Complaint on March 19, 1975, all as appears from the U.S. Marshals Service herein.

It appearing that Defendant, Master Charge, has duly filed its Answer herein on April 3, 1975, that Defendants, County Treasurer, Tulsa County, and Board of County Commissioners, Tulsa County, have duly filed their Answers herein on April 1, 1975, that Defendants, Edward Samilton, Deltessa Samilton, Sears, Roebuck and Company, Morris Finance, Oklahoma School of Business, and Beneficial Finance, have failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a mortgage note and foreclosure on a real property mortgage securing said mortgage note and that the following described real property is located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

> Lot Fourteen (14), in Block Seven (7), in CHANDLER-FRATES FOURTH ADDITION, a Subdivision of Tulsa County, State of Oklahoma, according to the recorded plat thereof.

THAT the Defendants, Edward Samilton and Deltessa Samilton, did, on the 20th day of October, 1967, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of $14,450.00 with 6 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, Edward Samilton and Deltessa Samilton, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 12 months last past, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of $13,155.98 as unpaid principal with interest thereon at the rate of 6 percent per annum from June 1, 1974, until paid, plus the cost of this action accrued and accruing.

The Court further finds that as of the entry of this Judgment there are no real estate taxes owed Tulsa County by Defendants, Edward Samilton and Deltessa Samilton, which are a lien against the property being foreclosed herein.

The Court further finds that Defendant, Master Charge, is entitled to judgment against Defendant, Edward Samilton, in the amount of $213.00, plus interest according to law and accrued court costs, but that such judgment would be subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, Edward Samilton and Deltessa Samilton, in personam, for the sum of $13,155.98 with interest thereon at the rate of 6 percent per annum from June 1, 1974, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant, Master Charge, have and recover judgment, in personam, against the Defendant, Edward Samilton, in the amount of $213.00, plus interest according to law and accrued court costs as of the date of this judgment, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendants, Sears, Roebuck and Company, Morris Finance, Oklahoma School of Business, and Beneficial Finance.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue

of this judgment and decree, all of the Defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof, specifically including any lien for personal property taxes which may have been filed during the pendency of this action.

/s/ Allen E. Barrow
United States District Judge

APPROVED

ROBERT P. SANTEE
Assistant United States Attorney

GARY J. SUMMERFIELD
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County

HARRY A. LENTZ, JR.
Attorney for Defendant,
Master Charge

bcs

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. STEVEN F. JONES a/k/a STEVEN FRANKLIN JONES, TINA A. JONES, and FIRST NATIONAL BANK OF BARTLESVILLE, OK, Defendants.	)	CIVIL ACTION NO. 75-C-47

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 15th day of July, 1975, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney; the Defendant, First National Bank of Bartlesville, OK, appearing by its attorney, David P. Rowland; and the Defendants, Steven F. Jones a/k/a Steven Franklin Jones and Tina A. Jones, appearing not.

The Court being fully advised and having examined the file herein finds that Defendants, Steven F. Jones and Tina A Jones, were served by publication, as appears from the Proof of Publication filed herein; and that Defendant, First National Bank of Bartlesville, OK, was served with Summons and Complaint on February 5, 1975, as appears from the U.S. Marshals Service herein.

It appearing that Defendant, First National Bank of Bartlesville, OK, has duly filed its Answer and Counterclaim and Cross Complaint herein on February 26, 1975, that Defendants, Steven F. Jones and Tina A. Jones, have failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a mortgage note and foreclosure on a real property mortgage securing said mortgage note and that the following described real property is located in Washington County, Oklahoma, within the Northern Judicial District of Oklahoma:

8

Lot Two (2), Block Twenty-three (23), OAK PARK VILLAGE, SECTION II, an Addition to the City of Bartlesville, Washington County, State of Oklahoma, according to the recorded plat thereof.

THAT the Defendants, Steven F. Jones and Tina A. Jones, did, on the 20th day of December, 1973, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of $9,000.00 with 8 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, Steven F. Jones and Tina A. Jones, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 12 months last past, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of $9,066.54 as unpaid principal with interest thereon at the rate of 8 1/2 percent per annum from March 1, 1974, until paid, plus the cost of this action accrued and accruing.

The Court further finds that Defendant, First National Bank of Bartlesville, OK, is entitled to judgment against Defendants, Steven F. Jones and Tina A. Jones, in the amount of $230.09, plus interest at the rate of 10 percent per annum from February 26, 1975, and accrued court costs, but that such judgment would be subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, Steven F. Jones and Tina A. Jones, in rem, for the sum of $9,066.54 with interest thereon at the rate of 8 1/2 percent per annum from March 1, 1974, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant, First National Bank of Bartlesville, OK, have and recover judgment, in rem, against the Defendants, Steven F. Jones and Tina A. Jones, in the amount of $230.09, plus interest at the rate of 10 percent per annum from February 26, 1975, and accrued court costs as of the date of this judgment, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the Defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof.

/S/ Allen E. Barrow
United States District Judge

APPROVED

ROBERT P. SANTEE
Assistant United States Attorney

David P. Rowland

DAVID P. ROWLAND
Attorney for Defendant,
First National Bank of Bartlesville, OK

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MARY VIRGINIA REED,

Plaintiff,

vs. No. 74-C-446

SAFEWAY STORES, INCORPORATED, and ROBERT L. WATSON,

Defendants.

ORDER OF DISMISSAL

Now on this 15th day of July, 1975, comes on for consideration the Stipulation for Dismissal of plaintiff and defendants herein in the above entitled cause. The Court finds that said cause has been settled and that defendants have this date paid to plaintiff the sum of Two Thousand Five Hundred Dollars ($2500.00), in full settlement, release and satisfaction of plaintiff's cause of action set forth in the Complaint herein, and that plaintiff has accepted said sum in full satisfaction, release and discharge of her cause of action and claim against the defendants, and the Court, after due consideration, finds that said Dismissal should be approved.

IT IS THEREFORE ORDERED that this cause be, and the same is hereby dismissed with prejudice, each party to bear their own costs.

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

Attorney for Plaintiff

Attorney for Defendants

'75 JUN 12 AM 10 27

IN THE UNITED STATES DISTRICT COURT FOR THE LAW DEPARTMENT
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. ALBERT LEACH, JR., a/k/a ALBERT L. LEACH, JR., a/k/a ALBERT LEACH; DELLA M. LEACH, if living, or if not, her unknown heirs, assigns, executors, and administrators; PHYDELMA JEAN LEACH; C.B.S. FINANCE COMPANY; JAMES DUMPSON, Commissioner of Social Services of the City of New York; ALLIED PLUMBING COMPANY OF TULSA, INCORPORATED; and J. G. FOLLENS, Attorney at Law, Defendants.	)	CIVIL ACTION NO. 74-C-472

FILED
JUL 15 1975
Jack C. Silver, Clerk
U. S. DISTRICT COURT

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 15th day of July, 1975, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney; the Defendant, James Dumpson, Commissioner of Social Services of the City of New York, appearing by his attorney, W. Bernard Richland, Corporation Counsel; the Defendant, Allied Plumbing Company of Tulsa, appearing by its attorney, J. G. Follens; the Defendant, J. G. Follens, Attorney at Law, appearing pro se; and the Defendants, Albert Leach, Jr., a/k/a Albert L. Leach, Jr., a/k/a Albert Leach, Della M. Leach, if living, or if not, her unknown heirs, assigns, executors, and administrators, Phydelma Jean Leach, and C.B.S. Finance Company, appearing not.

The Court being fully advised and having examined the file herein finds that Defendants, Della M. Leach, if living, or if not, her unknown heirs, assigns, executors, and administrators, and Phydelma Jean Leach, were served by publication, as appears from the Proof of Publication filed herein; the Defendants, Allied Plumbing Company of Tulsa, Incorporated and J. G. Follens, Attorney at Law, were served with Summons and Complaint on December 2, 1974; the Defendant, Albert Leach, Jr.,

a/k/a Albert L. Leach, Jr., a/k/a Albert Leach, was served with Summons and Complaint on February 25, 1975; the Defendant, C.B.S. Finance Company, was served with Summons and Complaint on December 9, 1974; and the Defendant, James Dumpson, Commissioner of Social Services of the City of New York, was served with Summons and Complaint on December 30, 1974, all as appears from the U.S. Marshals Service herein.

It appearing that Defendant, James Dumpson, Commissioner of Social Services of the City of New York, has duly filed his Notice of Appearance and Waiver in Foreclosure herein on March 6, 1975, the Defendants, Allied Plumbing Company of Tulsa, and J. G. Follens, Attorney at Law, have duly filed their Answer herein on December 3, 1974, and Defendants, Albert Leach, Jr., a/k/a Albert L. Leach, Jr., a/k/a Albert Leach, Della M. Leach, if living, or if not, her unknown heirs, assigns, executors, and administrators, Phydelma Jean Leach, and C.B.S. Finance Company, have failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a mortgage note and foreclosure on a real property mortgage securing said mortgage note and that the following described real property is located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

> Lot Twenty-five (25), Block Five (5), HARTFORD HILLS ADDITION to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

THAT the Defendants, Albert Leach, Jr., and Della Leach, did, on the 22nd day of March, 1963, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of $8,600.00 with 5 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, Albert Leach, Jr., and Della Leach, if living, or if not, her unknown heirs, assigns, executors, and administrators, made default under the

terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 12 months last past, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of $6,881.00 as unpaid principal with interest thereon at the rate of 5 1/2 percent per annum from April 1, 1974, until paid, plus the cost of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, Albert Leach, Jr., in personam, and Della Leach, if living, or if not, her unknown heirs, assigns, executors, and administrators, in rem, for the sum of $6,881.00 with interest thereon at the rate of 5 1/2 percent per annum from April 1, 1974, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendants, Phydelma Jean Leach, C.B.S. Finance Company, James Dumpson, Commissioner of Social Services of the City of New York, Allied Plumbing Company of Tulsa, Incorporated, and J. G. Follens, Attorney at Law.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and apply the proceeds as follows:

1. To the costs of this action accrued and accruing.
2. To the satisfaction of Plaintiff's Judgment.
3. To Allied Plumbing Company of Tulsa, Incorporated, in the amount of $116.61 with interest thereon at the rate of 10 percent per annum from June 29, 1971 until paid.
4. To J. G. Follens, Attorney at Law, in the amount of $250.00.

5. To James Dumpson, Commissioner of Social Services of the City of New York, in the amount of $2,310.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the Defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof.

/s/ Allen E. Barrow
United States District Judge

APPROVED

ROBERT P. SANTEE
Assistant United States Attorney

J. G. FOLLENS, pro se,
and as Attorney for Defendant,
Allied Plumbing Company of
Tulsa, Incorporated

W. BERNARD RICHLAND
Corporation Counsel
Attorney for Defendant,
James Dumpson, Commissioner
of Social Services of the
City of New York

bcs

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. ELVIS C. LANDRUM a/k/a ELVIS CALVIN LANDRUM a/k/a ELVIS C. LANDRUM, SR., a/k/a ELVIS LANDRUM, LENORA E. LANDRUM, DR. H. C. SANDERS, CENTURY FINANCE COMPANY OF TULSA, INC., ALLIED PLUMBING COMPANY OF TULSA, INC., HOME SERVICE CLUB, COUNTY TREASURER, Tulsa County, BOARD OF COUNTY COMMISSIONERS, Tulsa County, and AVCO FINANCIAL SERVICES, INC., Defendants.	)	CIVIL ACTION NO. 75-C-52

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 26th day of June, 1975, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney; the Defendant, Dr. H. C. Sanders, appearing by his attorney, Robert B. Copeland; the Defendant, Century Finance Company of Tulsa, Incorporated, appearing by its attorney, J. G. Follens; the Defendants, County Treasurer, Tulsa County, and Board of County Commissioners, Tulsa County, appearing by Gary J. Summerfield, Assistant District Attorney; and the Defendants, Elvis C. Landrum a/k/a Elvis Calvin Landrum a/k/a Elvis C. Landrum, Sr., a/k/a Elvis Landrum, Lenora E. Landrum, Allied Plumbing Company of Tulsa, Incorporated, Home Service Club, and AVCO Financial Services, Incorporated, appearing not.

The Court being fully advised and having examined the file herein finds that Defendants, Elvis C. Landrum a/k/a Elvis Calvin Landrum a/k/a Elvis C. Landrum, Sr., a/k/a Elvis Landrum and Lenora E. Landrum, were served by publication, both as appears from the Proof of Publication filed herein; the

Defendants, Dr. H. C. Sanders, Century Finance Company of Tulsa, Inc., Allied Plumbing Company of Tulsa, Inc., Home Service Club, County Treasurer, Tulsa County, and Board of County Commissioners, Tulsa County, were served with Summons and Complaint on February 6, 1975; and the Defendant, AVCO Financial Service, Inc., was served with Summons and Complaint on February 11, 1975, all as appears from the U.S. Marshals Service herein.

It appearing that Defendant, Dr. H. C. Sanders, has duly filed his Disclaimer herein on February 13, 1975, that Defendant, Century Finance Company of Tulsa, Inc., has duly filed its Disclaimer herein on February 13, 1975, that Defendants, County Treasurer, Tulsa County, and Board of County Commissioners, Tulsa County, have duly filed their Answers herein on February 24, 1975, that Defendants, Elvis C. Landrum a/k/a Elvis Calvin Landrum a/k/a Elvis C. Landrum, Sr., a/k/a Elvis Landrum, Lenora E. Landrum, Allied Plumbing Company of Tulsa, Inc., Home Service Club, and AVCO Financial Services, Inc., have failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a mortgage note and foreclosure on a real property mortgage securing said mortgage note and that the following described real property is located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

> Lot Fourteen (14), in Block One (1), SKYLINE HEIGHTS ADDITION, an Addition to Tulsa County, State of Oklahoma, according to the recorded plat thereof.

THAT the Defendants, Elvis C. Landrum and Lenora E. Landrum, did, on the 21st day of September, 1964, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of $11,500.00 with 5 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, Elvis C. Landrum and Lenora E. Landrum, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly

installments due thereon for more than 12 months last past, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of $9,659.11 as unpaid principal with interest thereon at the rate of 5 1/2 percent per annum from April 1, 1974, until paid, plus the cost of this action accrued and accruing.

The Court further finds that there is due and owing to the County of Tulsa, State of Oklahoma, from Defendants, Elvis C. Landrum and Lenora E. Landrum, the sum of $ 8.81 plus interest according to law for personal property taxes for the year(s) 1973 and 1974 and that Tulsa County should have judgment, in rem, for said amount, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, Elvis C. Landrum and Lenora E. Landrum, in rem, for the sum of $9,659.11 with interest thereon at the rate of 5 1/2 percent per annum from April 1, 1974, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the County of Tulsa have and recover judgment, in rem, against Defendants, Elvis C. Landrum and Lenora E. Landrum, for the sum of $ 8.81 as of the date of this judgment plus interest thereafter according to law for personal property taxes, but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendants, Allied Plumbing Company of Tulsa, Inc., Home Service Club, and AVCO Financial Services, Inc.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's money

judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the Defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof, specifically including any lien for personal property taxes which may have been filed during the pendency of this action.

/S/ H. Dale Cook
United States District Judge

APPROVED

ROBERT P. SANTEE
Assistant United States Attorney

GARY J. SUMMERFIELD
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County

bcs

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

AKZONA, INC., d/b/a AMERICAN ENKA CO.,

Plaintiff,

vs.

OZARK INDUSTRIES, INC., SECURITY BANK AND TRUST COMPANY, Miami, Oklahoma, FIRST NATIONAL BANK, Miami, Oklahoma, and SLT WAREHOUSE CO.,

Defendants.

NO. 74-C-369

ORDER OF DISMISSAL WITH PREJUDICE

The above-captioned ~~matter~~ cause of action Complaint are ordered dismissed with prejudice pursuant to Rule 41, Federal Rules of Civil Procedure, for the reason that the parties have settled all issues of the case as outlined in the Mutual Release attached to this Order.

UNITED STATES DISTRICT JUDGE

MUTUAL RELEASE

This Mutual Release is executed on the 2nd day of July, 1975, between AKZONA INCORPORATED, d/b/a AMERICAN ENKA COMPANY ("Akzona") and THE SECURITY BANK AND TRUST COMPANY OF MIAMI, OKLAHOMA (the "Bank").

RECITALS:

1. On September 13, 1974, Akzona filed a civil action against the Bank in the United States District Court for the Northern District of Oklahoma, case number 74-C-369, for the recovery of 29,747.5 pounds of yarn (the "yarn") or in the alternative for its aggregate value of $40,159.13.

2. Akzona and the Bank have agreed to execute this mutual release in settlement of all disputes and differences concerning the yarn.

In consideration of the return by the Bank of the yarn to Akzona in good and marketable condition, Akzona agrees to release the Bank of any and all claims or actions which Akzona has against the Bank arising out of or connected with the yarn, directly or indirectly, which now exist or which may arise in the future. As further consideration for the return of the yarn Akzona agrees to convey to the Bank $15,000 as well as its dismissal with prejudice of the above-entitled cause.

In consideration of the payment of $15,000 by Akzona to the Bank and the tender of the dismissal with prejudice, the Bank agrees to tender the yarn to Akzona in good and marketable condition. As further consideration the Bank releases all of its rights, title, interest and claims to the yarn which it may presently have or may have in the future. As further consideration, the Bank agrees to indemnify and hold Akzona harmless from any and all

rights, title, interest, claims or actions which the Small Business Administration (the "S.B.A.") or any other creditors of Ozark Industries, Inc. may presently have or may ever have arising out of or connected with the yarn, directly or indirectly.

The undersigned warrant and represent that each is authorized to enter into this mutual release and by executing this release each binds its successors and assigns forever.

The parties to this Mutual Release agree that several counterparts of this instrument will be signed and that each such copy shall constitute an original and have equal force and effect.

ATTEST:

Title
Assistant Secretary

AKZONA INC. d/b/a AMERICAN ENKA CO.

By _____
Title
Vice President
"Akzona"

ATTEST:

Title
Assistant Secretary

THE SECURITY BANK & TRUST COMPANY
OF MIAMI, OKLAHOMA

By _____
Title
Vice President "Bank"

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. WILLA SETTLE SMITH, HOUSING AUTHORITY OF THE CITY OF TULSA, COUNTY TREASURER, Tulsa County, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Defendants.	)	CIVIL ACTION NO. 75-C-75

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 26th day of June, 1975, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney; the Defendants, County Treasurer, Tulsa County, and Board of County Commissioners, Tulsa County, appearing by Gary J. Summerfield, Assistant District Attorney; and the Defendants, Willa Settle Smith and Housing Authority of the City of Tulsa, appearing not.

The Court being fully advised and having examined the file herein finds that Defendants, County Treasurer, Tulsa County, and Board of County Commissioners, Tulsa County, were served with Summons and Complaint on February 20, 1975; that Defendant, Housing Authority of the City of Tulsa, was served with Summons and Complaint on February 25, 1975, all as appears from the U.S. Marshals Service herein; and that Defendant, Willa Settle Smith, was served by publication, as appears from the Proof of Publication filed herein.

It appearing that Defendants, County Treasurer, Tulsa County, and Board of County Commissioners, Tulsa County, have duly filed their Answers herein on March 12, 1975, and Defendants, Willa Settle Smith and Housing Authority of the City of Tulsa, have failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a mortgage note and foreclosure on a real property mortgage securing said mortgage note and that the following described real property is located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

> Lot Three (3), Block Six (6), SUBURBAN ACRES SECOND ADDITION to the City of Tulsa, County of Tulsa, State of Oklahoma, according to the recorded plat thereof.

THAT the Defendant, Willa Settle Smith, did, on the 8th day of May, 1974, execute and deliver to the Administrator of Veterans Affairs, her mortgage and mortgage note in the sum of $8,500.00 with 8 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendant, Willa Settle Smith, made default under the terms of the aforesaid mortgage note by reason of her failure to make monthly installments due thereon for more than 12 months last past, which default has continued and that by reason thereof the above-named Defendant is now indebted to the Plaintiff in the sum of $8,520.17 as unpaid principal with interest thereon at the rate of 8 1/2 percent per annum from June 1, 1974, until paid, plus the cost of this action accrued and accruing.

The Court further finds that as of the entry of this Judgment there are no real estate taxes owed Tulsa County by Defendant, Willa Settle Smith, which are a lien against the property being foreclosed herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendant, Willa Settle Smith, in rem, for the sum of $8,520.17 with interest thereon at the rate of 8 1/2 percent per annum from June 1, 1974, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendant, Housing Authority of the City of Tulsa.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the Defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof, specifically including any lien for personal property taxes which may have been filed during the pendency of this action.

/S/ H. Dale Cook
United States District Judge

APPROVED

ROBERT P. SANTEE
Assistant United States Attorney

GARY J. SUMMERFIELD
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County

bcs

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

CEMENT ASBESTOS PRODUCTS COMPANY, a corporation, Plaintiff,	)	
VS.	)	NO. 75-C-111
UNITED SUPPLY CO. OF TULSA, INC., JACK L. SPRADLING and YVONNE SPRADLING, Defendants.	)	

FILED
JUL 11 1975
Jack C. Silver, Clerk
U. S. DISTRICT COURT

JUDGMENT

On this 11th day of July, 1975 the above styled cause coming on for ~~hearing~~ consideration before the Court by agreement and stipulation of the parties, all parties being represented as follows: For the plaintiff, Sam P. Daniel, Jr.; for the defendants, George Thompson. Thereupon, the court, having been advised by statements of counsel and stipulations made that the defendants are indebeted to the plaintiff as set forth in the Complaint herein, and that judgment should be entered in favor of the plaintiff and against the defendants, and each of them, finds that judgment should be entered forthwith. In accordance therewith, plaintiff is entitled to Judgment against defendants and each of them, in a total sum of $69,673.48 plus $ 4,637.92 interest and $6,900.00 attorneys fees for plaintiff's attorney.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff have and recover Judgment from the defendants, and each of them in the total sum of $69,673.48 plus interest in the sum of $ 4,637.92 and the sum of $6,900.00 attorneys fees for its attorney and its costs herein expended.

Allen E. Barrow
JUDGE

APPROVED AS TO FORM:

Sam P. Daniel, Jr.
Attorney for Plaintiff

George Thompson
Attorney for all Defendants

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OKLAHOMA

SIDNEY I. SHUPACK (FORMERLY CHUPACK), Plaintiff, vs. MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., a Corporation, and PETER R. EHRLICH, CARL A. ANTENNUCCI, THOMAS G. WHITE, HERBERT S. RUBEN, and RICHARD B. MAYER, Trustees of the Deferred Profit Sharing Plan for Employees of Merrill Lynch, Pierce, Fenner & Smith, Inc., Defendants.	)	No. 75-C-76 ✓

ORDER OF DISMISSAL WITH PREJUDICE

This matter has been settled and the parties have jointly stipulated and requested that the Court enter its order dismissing this action with prejudice.

IT IS THEREFORE ORDERED by the Court that this action is hereby dismissed with prejudice.

Dated this 7th day of July, 1975.

Allen E. Barrow
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

HOME INSURANCE COMPANY,

Plaintiff,

and

WILKERSON SHOE COMPANY,
a corporation,

Intervenor,

vs.

NATIONAL REALTY INVESTORS TRUST OF BOSTON, d/b/a NORTHLAND SHOPPING CENTER; McMICHAEL CONCRETE COMPANY, a corporation, individually and as a successor corporation of McMICHAEL PRECAST CONCRETE CO., I. A. JACOBSON, individually and as Trustee of Northside Village Shopping Center, Inc.; JACOBSON LIFETIME BUILDINGS, INC.; and NORTHSIDE VILLAGE SHOPPING CENTER, INC.,

Defendants.

No. 73-C-206

ORDER OF DISMISSAL

Upon Motions of Plaintiff and Intervenor that the instant action be dismissed without prejudice and upon representation by Defendants that they request no terms or conditions be imposed on the requested dismissal, the Court finds said Motions should be granted.

IT IS ORDERED that the actions of Plaintiff and Intervenor herein are dismissed without prejudice and that no terms or conditions are imposed pursuant to said dismissal.

DATED this 8 day of July, 1975.

Fred Daugherty

FRED DAUGHERTY
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

DANELL LEE HILTON and DANA LYNETTE HILTON, by LADONNA HILTON, their mother and next friend,

Plaintiffs,

vs.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, a Delaware corporation,

Defendant.

No. 75-C-1

JOURNAL ENTRY
OF JUDGMENT

NOW, on this 8th day of June, 1975, the above entitled matter comes on for hearing, pursuant to regular assignment. The plaintiff, DANELL LEE HILTON and DANA LYNETTE HILTON, by LADONNA HILTON, their mother and next friend, and as guardian of the person and conservator of the estate for DANELL LEE HILTON and DANA LYNETTE HILTON, minors, appearing in person and by her attorney, Jack I. Gaither, and the defendant appearing by its attorney, David Noss. The Court finds that by stipulation and agreement of the parties, the trial of the above entitled cause by jury may be waived and judgment may be entered for the plaintiff's, DANELL LEE HILTON and DANA LYNETTE HILTON, by LADONNA HILTON, personally and as guardian and conservator of the estate of said minors and as trustee for the heirs and next of kin of DANNY E. HILTON, deceased, against the defendant, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, in the sum of ten thousand dollars ($10,000.00) and the costs of this action, and said sum is awarded as full and complete damages

to the plaintiff's and other heirs and next of kin of said DANNY E. HILTON, by reason of his instant death resulting when a train of the defendant's collided with a 1968 Pontiac automobile driven by said DANNY E. HILTON, at Newkirk, Oklahoma, on May 16, 1974, said sum including all damages of any nature for which the defendant may be liable by reason of the wrongful death of said DANNY E. HILTON.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that plaintiff's DANELL LEE HILTON and DANA LYNETTE HILTON, by LADONNA HILTON, individually, their mother, next friend and as guardian and conservator of the estate of said minor children, have and recover of and from THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware Corporation, the sum of ten thousand dollars ($10,000.00) and all costs of this action, and defendant is directed and ordered to pay said sum of ten thousand dollars ($10,000.00) to said LADONNA HILTON, and thereafter be absolved from any and all further liability for damages arising from the wrongful death of the decedent, DANNY E. HILTON; and the plaintiff's are further ordered and directed to and given authority to execute a release and satisfaction of judgment and general release of all demands upon receipt of the sum of ten thousand dollars ($10,000.00); and, to file a release and satisfaction of judgment with the Clerk of this Court; for which let execution issue.

DATED this 8th day of June, 1975.

Wm. E. Bauman

UNITED STATES DISTRICT JUDGE OF THE NORTHERN DISTRICT OF OKLAHOMA

APPROVED AS TO FORM:
IVERSON & IVERSON

By Jack L. Iverson
Attorneys for Plaintiffs

RAINEY, WALLACE, ROSS & COOPER, and RHEAM and NOSS

By David Rainey & O. M. Rheam
Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

THOMAS JEFFERSON CLARK,

Plaintiff,

vs.

STATE OF OKLAHOMA ex rel.
ROBERT D. SIMMS, JUDGE,

Defendant.

75-C-217

ORDER SUSTAINING MOTION TO DISMISS AND DISMISSING
CAUSE OF ACTION AND COMPLAINT

The Court has for consideration the Motion to Dismiss filed by the defendant, State of Oklahoma, ex rel. Robert D. Simms, Judge, the brief in support thereof, and having carefully perused the entire file, and, being fully advised in the premises, finds:

That plaintiff instituted the present action, pro se, on June 2, 1975, under the provisions of Title 42 U.S.C.A. Section 1983. The basic allegations of the complaint are hereinafter delineated.

Plaintiff alleges that on or about March 11, 1970, the State of Oklahoma initiated certain Misdemeanor actions against plaintiff, alleging that plaintiff should stand trial in the District Court of Tulsa County, to answer charges of libel. Plaintiff further alleges that the record will indicate that while the allegations grew out of a single action, plaintiff was charged on three separate counts of libel, CRM70-218, 70-219 and 70-220. Plaintiff was convicted of the offense of libel in CRM70-218 on the 20th day of April, 1970.

12 O.S.A. Section 95 provides in pertinent part, as follows:

> "Civil actions other than for the recovery of real property can only be brought within the following periods, after the cause of action shall have been accrued, and not afterwards:
>
> "Third. Within two (2) years: An action for trespass upon real property; an action for taking, detaining or injuring personal property, including actions for the specific recovery of personal property; an action for injury to the rights of another, not arising on contract, and not hereinafter enumerated; ***."

For the foregoing reasons, IT IS ORDERED that the Motion to Dismiss be and the same is hereby sustained and this cause of action and complaint are hereby dismissed.

ENTERED this 8th day of July, 1975

Allen E. Barrow

CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR NORTHERN OKLAHOMA

NOVA MARIA ARKEKETA,	)	FILED IN OPEN COURT
Plaintiff,	)	
vs.	)	No. 75-C 234 ✓ JUL 8 1975 K
PAWNEE AGENCY and JAMES HALE, Superintendent of Pawnee Agency, Bureau of Indian Affairs,	)	Jack C. Silver Clerk, U. S. District Court
Defendant.	)	

ORDER FOR
DISMISSAL

NOW on this 8th day of July, 1975, comes the said Plaintiff by her attorney, GERALD E. KAMINS, and thereupon on motion, it is ordered by the Court that this cause be and the same hereby is dismissed at cost of Plaintiff, without prejudice to her right to bring a new action in this behalf.

Allen E. Barrow

ALLEN E. BARROW
U. S. DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DOLORES C. ZAMORA, now MOORE Plaintiff, vs. THE FIRST STATE BANK OF RIO RANCHO ESTATES, a Corporation Defendant.	)	NO. 75-C-174

ORDER

This case is before the Court having been removed from the State District Court of Rogers County, Oklahoma. The Plaintiff has moved to remand the case to the State Court alleging the removal was untimely in that it was accomplished after the statutory thirty-day period allowed for removal. The Plaintiff's initial petition was filed on March 13, 1975, and was amended by the Plaintiff on April 2, 1975. The Defendant's petition for removal was filed on May 5, 1975. The Defendant alleges that he was unable to ascertain that the action was removable until the Amendment was filed because the original complaint contained no allegation as to the domicile and residence of the Defendant.

The applicability of 28 U.S.C.A. §1441(b) cited by Defendant is keyed to the non-removability of the cause in the first instance . . . and the mere fact of some alteration in the pleading is insufficient to support an attempt at removal. Adams v. Western Steel Building, Inc. 296 F.Supp. 759 (D.C. Colo. 1969). When a valid initial pleading is properly filed and a process properly served on a party the time to petition for removal begins to run upon receipt of the process by the defendant. Moore v. Firedoor Corporation of America, 250 F.Supp. 683 (D.C. Md. 1966). However, if the amended pleading reshaped

the stated claims in a manner to make removability for the first time ascertainable, the petition is indeed timely. McLeod v. Cities Service Gas Company, 233 F.2d 242 (10th Cir. 1956).

The Court finds that the initial pleading was valid, that the process was properly served and received by the Defendant on March 17, 1975, that Defendant could have ascertained from the initial pleading that the case was removable, and that the Defendant's petition for removal on May 5, 1975, was more than thirty days after his receipt of the valid process and was therefore untimely. As to Defendant's allegation that he was unable to ascertain removability due to Plaintiff's failure to make allegations as to domicile and residence of the Defendant, the Court finds that information to have been within the realm of Defendant's knowledge.

The Court, finding that the Defendant filed his petition for removal in an untimely manner, orders this case remanded to the District Court for Rogers County, State of Oklahoma.

It is so Ordered this 8th day of July, 1975.

H. DALE COOK
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

STANLEY MELNICK, d/b/a GARDENS OF CORTEZ APARTMENTS, An Individual,	)	
Plaintiff,	)	75-C-90
vs.	)	
COMMERCE AND INDUSTRY INSURANCE COMPANY, a New York corporation,	)	
Defendant.	)	

ORDER OF DISMISSAL WITHOUT PREJUDICE

The plaintiff has applied for an Order of Dismissal Without Prejudice in this action and the defendant has consented thereto.

IT IS THEREFORE ORDERED that this action be and it is hereby dismissed without prejudice.

Dated: July 8, 1975.

H. Dale Cook
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

JACK H. SANTEE and HELEN J. SANTEE, Plaintiffs	)	
-vs-	)	No. 74-C-214
UNITED STATES OF AMERICA Defendant.	)	

JUL 3

OPINION AND JUDGMENT

This is an action brought by the Plaintiffs, Jack H. Santee and Helen J. Santee,[1/] against Defendant, United States of America, for return of income tax paid for the 1968 taxable year. Jurisdiction is conferred on this court by virtue of Title 28, U.S.C., §1346(a)(1).

Plaintiff alleges by Complaint that he purchased for himself, together with a co-purchaser, certain property located within Tulsa, Oklahoma, and that he thereafter during said taxable year transferred to the City of Tulsa, his interest in said property, receiving in return a consideration which he alleges was substantially less than the true fair cash market value. Plaintiff claims the difference between the amount received and the fair cash market value of said property is a proper charitable contribution, for which he is entitled to credit during said taxable year. Section 170 of the Internal Revenue Code of 1974 (26 U.S.C.) permits a taxable deduction for any charitable contribution made during a taxable year

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1/ Jack Santee is hereinafter referred to as the Plaintiff, since his wife, Helen, was joined in the suit by reason of the filing of a joint tax return for the subject year 1968.

with limitations not here applicable. A charitable contribution means a contribution to or for the use of, among other things, "a state, a possession of the United States, or any political subdivision of any of the foregoing, * * *" but only if the contribution is made for public purposes exclusively. Section 170(c) of the Code. In this case, the Government does not question the qualification of the City of Tulsa as a recipient of a charitable contribution or the use made of the questioned property. (Plaintiff, in his original Complaint, also claimed business expense deductions on said tax return, being a portion of club dues and entertainment expenses. This portion of the Complaint has been abandoned by the Plaintiff and is therefore not for consideration by the Court.)

Plaintiff alleges and Defendant admits that the Plaintiffs timely filed their income tax return for the said taxable year in which there was claimed a charitable deduction in the amount of $8,200, which was disallowed by the District Director of Internal Revenue. Plaintiff thereafter paid the assessment occasioned by said disallowance and after exhausting appropriate administrative remedy, brought this action for refund of said taxes.

The parties have agreed the sole issue before this Court is to determine the fair cash market value of the property transferred to the City of Tulsa by quit-claim deed dated December 27, 1968. The property was purchased August 26, 1968, by the Plaintiff and a co-owner, with each holding fifty percent interest in the property. The parties have further stipulated and agreed that the proper computation of tax due and owing or to be refunded will be computed from a finding relating to the fair cash market value of said property so transferred to the City of Tulsa. In Cause No. 6008, styled United States of America v. Alphonso Williams, in the United States District Court for the Northern District of Oklahoma, the Court in that case offered at foreclosure sale certain properties allegedly

belonging to the Defendant Williams in order to satisfy a judgment obtained by the United States. Among the properties offered for sale was the subject property which property being more particularly described to-wit:

> 1. All of that part of the West Half of NW/4 of SE/4 of Section Thirty, Township Twenty North, Range Thirteen East, Tulsa County, lying North and West of the AT&SF Railroad, and
>
> 2. Lot Two, Block Three, Conservation Acres Addition to the City of Tulsa, Tulsa County, according to the recorded plat thereof,

containing 16.441 acres, more or less.

In Cause No. 6008, the Court ordered said property sold May, 1968, and thereafter three attempts were made to effect a judicial sale. The first attempt at judicial sale was in May of 1968, at which time no bids were received for the purchase of said property. Thereafter, in July, 1968, a second judicial sale was attempted at which time a nominal bidding price was received and thereafter rejected. Thereafter, on August 26, 1968, a third attempt to sell the said property resulted in the submission of a bid by Plaintiff, Santee, which concluded when the ultimate purchase price of the property paid by Plaintiff and his co-owner for the sum of $13,300.00 was paid and approved by the Court. In October, 1968, a hearing was held for the confirmation of said sale, at which time the City of Tulsa indicated its interest in said property for park purposes and counsel representing the United States of America objected to the confirmation of sale. The Court confirmed the sale, and title was transferred by Marshal's deed to the subject tracts of land which are the subject matter of the instant action. The Marshal's deeds are dated December 2, 1968. Thereafter, the City of Tulsa contacted the purchasers of said tracts and negotiated for the transfer of title to the City of Tulsa for park purposes. These negotiations culminated in the transfer of title by quit-claim deed dated December 27, 1968, wherein Plaintiff and his co-owner transferred title to the City of Tulsa for a monetary consideration of $13,600.00.

The Plaintiff, Jack H. Santee, is an attorney at law, residing in Tulsa, Oklahoma, and dealing in real estate investments, who testified concerning the purchase and sale of the subject property together with his knowledge obtained by investigation of the area prior to becoming interested in said property. Mr. Santee testified that his initial interest in the property came about by reason of representing various interested parties concerned in Cause No. 6008. He testified that from his investigation, it was his opinion the said tracts had the highest and best use as that of commercial development and high density housing. That there was no reason why appropriate zoning could not be obtained within a reasonable period of time to permit such development although said property at the time of purchase was zoned by the City of Tulsa as U.I.C., being a classification permitting only single unit residential housing. It was Mr. Santee's opinion that the highest and best use of Lot 2, the smaller of the two tracts, was that of light industrial development. He also testified that he was knowledgeable of the property and property values in the area where the subject tracts were located and that in his opinion the value of said property transferred to the City of Tulsa at the time of said transfer exceeded the amount of $30,000.00. Mr. Santee further testified that in his opinion the title to the subject property obtained by purchase at the judicial sale vested in such purchaser good title and that all outstanding claims had been foreclosed by the action of the United States District Court in Cause No. 6008.

In this regard, the United States alleges that there was a cloud upon the title to the property making the interest conveyed by Plaintiff something less than a good and marketable title. Defendant, therefore, contends that the fair market value of the property interest conveyed by Plaintiff was not proven since the testimony presented related to the fair market value of the property if held in fee simple.

The Court notes that in Cause No. 6008 that Court's Memorandum Opinion directed sale of the subject property with appraisal, but the later Journal Entry of Judgment did not designate such appraisal. The property was sold by the Marshal without appraisement. When application was made to confirm the sale to the Plaintiff, the United States Attorney, on behalf of the United States, objected, in writing, on the grounds that there was no appraisal. The objection was briefed and the issue presented to that Court. The Court held against the contention of the United States, finding that the sale was conducted properly and ordering confirmation. The United States did not appeal this finding, and therefore if the lack of an appraisal constitutes the alleged "cloud on the title", that issue has been previously determined.

Title 12 O.S. §766 provides in pertinent part:

> "The sheriff or other officer who . . . shall sell the said lands . . . shall make to the purchaser as good and sufficient deed of conveyance of the land sold, as the person or persons against whom such writ or writs of execution were issued could have made of the same, at or any time after they become liable to the judgment. The deed shall be sufficient evidence of the legality of such sale, and the proceedings therein, until the contrary be proved, and shall vest in the purchaser as good and as perfect an estate in the premises therein mentioned, as was vested in the party at, or after, the time when such lands and tenements became liable to the satisfaction of the judgment . . . ."

In keeping with the above, the Oklahoma Supreme Court in Lindeberg v. Messman, 95 Okla. 64, 218 P. 844 (1923), stated in the syllabus by the Court:

> "A sheriff's deed is, of itself, prima facie evidence that the grantee holds all the title and interest in the land conveyed that was held by the judgment debtor at the time of the rendition of the judgment, or at any time thereafter up to the sale of the premises; and is prima facie evidence of the validity of the judgment upon which such sale is based."

Even if the Defendant had shown some adverse claim on the title to the property, it is extremely questionable whether the fair market value would be affected thereby. There is no evidence

that the City of Tulsa objected to the title by reason of any defect thereof held by the purchaser at judicial sale. For example, in McLarry v. Commissioner of Internal Revenue, 30 F.2d 789 (5th Cir. 1929), in order to determine the tax basis of certain property, the fair market value at the time of acquisition had to be determined. The Commissioner of Internal Revenue contended that certain adverse claims made on the property should affect the determination of fair market value. However, the Court reasoned that to appraise the adverse claim of title and reckon the value of the property by deducting the value of the claim was not practicable because of the impossibility of application. "Any claim made adversely to the title of property has a quality or value, even a nuisance value, that may affect its ready sale but it does not change its actual value." Therefore, the evidence submitted by both parties regarding the fair market value of the property conveyed by the Plaintiff in the case at bar will be examined in order to determine the fair market value.

Mr. Carl O. Johnson, an experienced real estate appraiser for some forty-two years, testified that he had appraised approximately 300 tracts of land in behalf of the City of Tulsa in the vicinity of the subject tract for the purpose of assisting in procuring right-of-way for a proposed Cherokee Expressway, and that at the request of Plaintiff he had appraised the subject tracts in October, 1974. Mr. Johnson testified as to various other sales which he considered reasonably comparable, and stated that in his opinion the subject tracts had a reasonable fair cash market value as of December 26, 1968, of $36,000.00. This witness estimated that approximately 3.44 acres on the south end of Tract One maintained a value of $1,000.00 per acre for a total of $3,444.00, and that the remaining acres of said tract held an average value of $2,500.00 per acre. It was his opinion that the highest and best use of said property was light industrial and placed special emphasis on the fact that no other tract of this

size was available in the vicinity. The estimate of value assumed good and marketable title without encumbrances.

Mr. John Cassiday, a mechanical engineer by education employed by the Internal Revenue Service since 1961 as an evaluation engineer testified in behalf of the Defendant. Mr. Cassiday testified his principle experience was in the area of evaluating oil and gas properties although he did attend one course offered by the Tulsa Real Estate Board and was engaged in the sale of real estate in the years 1955 and 1956 in the Tulsa area. He further testified that when called upon he conducted real estate appraisals for the Internal Revenue Service. Mr. Cassiday testified that in his opinion the subject property contained a total of 16.82 acres, that the smallest tract contained .76 acres and he determined the subject property's highest and best use to be that of single family residential use because it was so zoned as of December 27, 1968. This witness testified there were no "significant comparable sales" excepting the Marshal's sale conducted pursuant to Cause No. 6008, and therefore found the value of said property to be the value paid by the Plaintiff at the Marshal's sale in the amount of $13,300.00. On cross examination, Mr. Cassiday testified that if the zoning of the subject property had been different, his opinion as to value would change in that if there was commercial zoning or multiple family dwelling zoning, the property would be worth more.

This property must be valued at its highest and best use as of December 27, 1968, and in keeping with what an owner, willing but not compelled to sell, would take and what a buyer, willing but not compelled to buy, would give for the property, both buyer and seller being reasonably knowledgeable of all relevant facts and circumstances. The fact that the property is zoned does not necessarily restrict the value of the property or its highest and best use unless there is competent evidence that the property could not reasonably be expected to be re-zoned and

therefore utilized for other purposes. No evidence was introduced in this case to substantiate that the subject property must be limited in its value to the use as single unit residences. There is substantial testimony that other tracts in the vicinity of the subject tract have been zoned for commercial purposes and there was no testimony that the subject tracts could not also be re-zoned.

The witness for the United States basically restricted his valuation to the only sale which he considered as comparable, that being Plaintiff's purchase of the property which was sold under Court order. Foreclosure sales, forced sales, and other transactions that have the aura of coercion or that of economic necessity must be looked upon with great care and unless such a sale clearly demonstrates it was made without elements of coercion by knowledgeable parties not being under the aegis of jurisdictional coercion, such a sale should not be accepted as comparable. It is noted that the Court in Cause No. 6008 offered the property three separate times before a bid was received that could even be considered. The fact that two prior offerings were made, one in which there were no bids whatsoever, and the second in which only a nominal offer was made, would indicate that the sale to the Plaintiff should be looked upon with great care and caution with regard to its being indicative of the fair cash market value as a sale between a knowledgeable, willing seller and purchaser. This is especially true when there is sufficient other evidence of comparable sales in the vicinity disregarding the forced judicial sale.

It is therefore the finding of the Court that the Plaintiff obtained sufficient good and valid title in fee simple to the subject tracts by virtue of the Marshal's deed and that the Plaintiff thereafter conveyed his ownership rights as obtained under said Marshal's deeds to the City of Tulsa on December 27, 1968.

The Court further finds that the fair cash market value of the subject property as of December 27, 1968, to equal $30,000.00.

Dated this 3rd day of July, 1975.

H. DALE COOK
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

VIRGIL ODOM,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 74-C-375
	)	
HOLDER'S, INC., an Oklahoma corporation,	)	
	)	
Defendant.	)	

ORDER OVERRULING MOTION FOR NEW TRIAL AND ORDER AWARDING ATTORNEY'S FEES AND COSTS

On May 28, 1975, the Court entered Judgment in the above-styled cause. On June 4, 1975, the Plaintiff, Virgil Odom, by and through his counsel, Robert L. Mason, filed a Motion for New Trial. The Motion contends that the Findings of Fact and Conclusions of Law as set out in the Judgment are not supported by the evidence particularly in regard to the Statute of Limitations and the Good Faith Compliance under the Fair Labor Standards Act of 1938 (29 U.S.C. §201 et seq.). The Plaintiff has filed a Brief in Support of the Motion for New Trial.

The Plaintiff has filed an Itemized Claim for Attorney's Fee and Cost wherein a claim is made for 33-1/2 hours of legal services at the rate of $60.00 per hour.

The Defendant, Holder's Inc., by and through its attorney, Deryl L. Gotcher, has responded by filing a brief in opposition to the Motion for a New Trial and objecting to the number of hours, as well as the rate per hour, claimed by the Plaintiff for legal services.

The Court has carefully considered the arguments of counsel and has perused the entire file and is fully advised in the premises. For the reasons set out in the Judgment it is the conclusion of the Court that the evidence supports the application of the two year Statute of Limitations in this case and the Good

Faith Compliance by the Defendant with the provisions of the FLSA. The Motion for a New Trial is therefore overruled.

The Court has carefully considered the Plaintiff's application for Attorney's Fees and finds that the Attorney for the Plaintiff has devoted 33-1/2 hours to the preparation and trial of the Plaintiff's cause and that the Plaintiff should be compensated at the rate of $40.00 per hour for the services of his attorney. Therefore it is the Order of the Court that the Plaintiff be compensated for 33-1/2 hours at the rate of $40.00 per hour for a total of $1,340.00 attorney's fees.

It is the finding of the Court that the Plaintiff expended total costs of $35.60 and that these costs should be taxed against the Defendant. Therefore it is the Order of the Court that $35.60 be taxed as costs against the Defendant and that the Plaintiff be awarded $35.60 as costs of this action.

It is so Ordered this 3rd day of July, 1975.

H. Dale Cook

H. DALE COOK
United States District Judge